



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2016-0555; FRL-9953-59-Region 7]

**Approval of Nebraska's Air Quality Implementation Plans;
Nebraska Air Quality Regulations and State Operating Permit
Programs**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) for the State of Nebraska. This action will amend the SIP to include revisions to title 129 of the Nebraska Air Quality Regulations, chapter 5, "Operating Permits - When Required"; chapter 9, "General Operating Permits for Class I and Class II Sources"; chapter 22, "Incinerators; Emission Standards"; chapter 30, "Open Fires"; and chapter 34 "Emission Sources; Testing; Monitoring. These revisions were requested by the Nebraska Department of Environmental Quality (NDEQ) in three submittals, submitted on May 1, 2003, November 8, 2011, and July 14, 2014. The May 1, 2003, submittal revised chapters 5 and 9, to address changes in regard to the permits-by-rule provisions of Title 129. The November 8, 2011, submittal allows for the issuance of multiple operating permits to major

sources through revisions to chapter 5. In addition, revisions to chapters 22 and 30 encourage the use of air curtain incinerators over open burning; and changes to chapter 34 clarify the authority of NDEQ to order emission sources to do testing when NDEQ deems it necessary. The July 14, 2014, submittal further revises chapter 34, by updating the reference to allowable test methods for evaluating solid waste, changing the amount of time allowed to submit test results, and allowing the Department to approve a request for testing with less than 30 days notification.

DATES: This direct final rule will be effective [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], without further notice, unless EPA receives adverse comment by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2016-0555, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7391, or by email at crable.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. What Action is EPA taking?

I. What is Being Addressed in this Document?

EPA is approving revisions into the SIP to include amendments to title 129 of the Nebraska Air Quality Regulations, chapters 5, 22, 30 and 34, as submitted on November 8, 2011. The EPA is also approving additional revisions to chapter 34, as submitted on July 14, 2014, and to chapters 5 and 9, as submitted on May 1, 2003. Revisions to chapter 5 allows for the issuance of multiple operating permits to major sources. The revisions to chapters 22 and 30 encourage the use of air curtain incinerators over open burning and the revisions to chapter 34 as submitted on November 8, 2011, clarify NDEQ's authority to require emission sources to test for contaminant emissions. The revisions to chapter 34 requested in the July 14, 2014, submittal updates the reference to allowable test methods for evaluating solid waste; makes changes to the amount of time allowed to submit test results; and allows NDEQ to approve a request to test with less than 30 days notification.

The revisions to chapter 5 submitted on May 1, 2003, allows a source otherwise subject to the Class II operating permit program to be covered instead by the permits-by-rule provisions, provided the source qualifies. The May 1, 2003 submittal, also revised chapter 9 to allow a source covered for some activities under a general permit be covered for other facilities or activities by a permits-by-rule. Revisions to chapter 5

"Operating Permits - When Required", submitted on November 8, 2011, clarifies the process for issuing operating permits to major sources comprised of different regulated entities or "persons". The changes allow each regulated entity more options in applying for operating permits and NDEQ more flexibility in issuing the permits. The revisions to chapter 5 are worded such that sources permitted under the changed language will not avoid other major source obligations. The revisions to chapter 22, "Incinerators; Emission Standards", establish requirements regarding opacity for air curtain incinerators while revisions to chapter 30, "Open Fires", allow burning in an air curtain incinerator with a general or community open fire permit issued by NDEQ. Title 129, chapter 34, "Emission Sources; Testing; Monitoring", as submitted on November 8, 2011, is being revised to clarify NDEQ's authority to order emission sources to make or have tests made to determine the rate of contaminant emissions from the source. The July 14, 2014, submittal further revises chapter 34, by updating the reference to allowable test methods for evaluating solid waste, changes the amount of time allowed to submit test results, and allows NDEQ to approve a request for testing with less than 30 days notification. For additional information on the revisions to chapter 5, 9, 22, 30 and 34 see the detail discussion table in the docket.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What Action is EPA Taking?

EPA is approving the state's request to revise the SIP to include amendments to title 129, of the Nebraska Air Quality Regulations, chapter 5, "Operating Permits - When Required"; chapter 22, "Incinerators; Emission Standards"; chapter 30, "Open Fires"; and chapter 34, "Emission Sources; Testing; Monitoring", as submitted by NDEQ on November 8, 2011. Also, EPA is approving NDEQ's July 14, 2014, submittal involving additional revisions to chapter 34 and revisions to chapters 5 and 9, "General Operating Permits for Class I and II Sources", as submitted on May 1, 2003.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA does not anticipate adverse comment because the revisions to the existing rules are routine and consistent with the Federal regulations, thereby,

strengthening the SIP. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to revise title 129 of the Nebraska Air Quality Regulations, chapter 5, "Operating Permits - When Required"; chapter 9, "General Operating Permits for Class I and II Sources"; chapter 22, "Incinerators; Emission Standards"; chapter 30, "Open Fires"; and chapter 34, "Emission Sources; Testing; Monitoring" if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Nebraska regulations described in the direct final amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided

¹ 62 FR 27968 (May 22, 1997).

that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 27, 2016. Mike Brincks,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC - Nebraska

2. Section 52.1420(c) is amended by revising the entries for 129-5, 129-9, 129-22, 129-30, and 129-34 to read as follows:

§52.1420 Identification of Plan.

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(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129-Nebraska Air Quality Regulations				
* * * * *				
129-5	Operating Permits - When Required	2/16/08	[Insert <u>Federal Register</u> date of publication date] [Insert <u>Federal Register</u> citation]	
* * * * *				
129-9	General Operating Permits for Class I and II Sources	11/20/02	[Insert <u>Federal Register</u> date of publication date] [Insert <u>Federal Register</u> citation]	
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Nebraska citation	Title	State effective date	EPA approval date	Explanation
129-22	Incinerators; Emission Standards	7/3/10	[Insert <u>Federal Register</u> date of publication date] [Insert <u>Federal Register</u> citation]	
* * * * *				
129-30	Open Fires	7/3/10	[Insert <u>Federal Register</u> date of publication date] [Insert <u>Federal Register</u> citation]	
* * * * *				
129-34	Emission Sources; Testing; Monitoring	5/13/14	[Insert <u>Federal Register</u> date of publication date] [Insert <u>Federal Register</u> citation]	
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PART 70 - STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

4. Amend appendix A to part 70 by adding paragraphs (m) and (n) under "Nebraska; City of Omaha; Lincoln-Lancaster County Health Department" to read as follows:

**Appendix A to Part 70 - Approval Status of State and Local
Operating Permits Programs**

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***Nebraska; City of Omaha; Lincoln-Lancaster County Health
Department***

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(m) The Nebraska Department of Environmental Quality approved revisions to Nebraska Air Quality Regulations, Title 129, Chapter 5, "Operating Permits - When Required", and Chapter 9, "General Operating Permits for Class I and II Sources", on September 5, 2002. The State's effective date is November 20, 2002. The revisions were submitted to EPA on May 1, 2003. This revision is effective on [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

(n) The Nebraska Department of Environmental Quality approved revisions to Nebraska Air Quality Regulations, Title 129, Chapter 5, "Operating Permits - When Required", on December 7, 2007. The State's effective date is February 16, 2008. The revisions were submitted to EPA on November 8, 2011. This revision is effective on [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

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